

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	
BIRKINBINE, BRYAN W.,)	Case No. 99-02789
)	
)	
Debtor.)	MEMORANDUM OF
)	DECISION, AND ORDER
)	
_____)	

HONORABLE TERRY L. MYERS, UNITED STATES BANKRUPTCY JUDGE

Stephen W. French, Boise, Idaho, for Debtor.

John H. Krommenhoek, Boise, Idaho, Chapter 13 Trustee.

BACKGROUND

The proposed chapter 13 plan of the above Debtor came on for its scheduled confirmation hearing on January 6, 2000. The Debtor's counsel, Mr. French ("Counsel") and the Trustee appeared. The plan was unopposed by creditors. Any issues of the Trustee regarding confirmation¹ had also been resolved. The Court, however, asked a question about the reasonableness of fees charged in this case. Counsel for the Debtor

¹ None appear of record. The Court cannot determine if any existed but were informally handled prior to hearing.

was instructed to submit an affidavit or statement in support of his fees. As of this date, 3 weeks later, Counsel has yet to do so.

Counsel advised the deputy clerk, upon her inquiry as to the status of the matter, that the affidavit was still being prepared.² No date was provided as to when the submission might be made. No request has been made by Counsel that the Court forbear from rendering decision, nor has Counsel explained the circumstances justifying the delay, nor identified when the affidavit will arrive.

There is no apparent reason why an explanation of services rendered would be so difficult or take so long to produce. Additionally, the delay of Counsel in completing the record impacts his client, who awaits confirmation of his plan, and also the creditors who are to be paid under the plan.

For the foregoing reasons, the Court concludes that it is appropriate to address the issue of reasonable compensation at this time upon the existing record.

DISCUSSION

The Court is empowered to review the reasonableness of fees charged a debtor. § 329(b); Rule 2017(a). In this case, Counsel charged \$1,000.00, with \$450.00 being paid prior to filing. The plan calls for \$550.00 to be paid Counsel by the Trustee over the first five months of the plan. This would consume \$110.00 of each \$175.00 monthly plan payment during this period.

² This occurred 2 weeks after the hearing, and a week prior to this Decision. Despite this inquiry, neither the clerk nor chambers staff is required to contact parties' counsel to ascertain the status of required filings or to encourage their submission.

The Court has for some time followed a practice that generally does not require proof of the reasonableness of fees in a chapter 13 case if they are in the aggregate less than \$1,000.00. *In re Gebert*, 99.4 I.B.C.R. 137, 138 (Bankr. D. Idaho 1999). But as discussed in *Gebert*, there is nothing in this unwritten rule of practice that insulates fees from review just because they are below the \$1,000 threshold. *See*, 99.4 I.B.C.R. at 138. The burden always rests on Counsel to justify the fees charged and show they are reasonable. *Id.*; *Hale v. United States Trustee (In re Basham)*, 208 B.R. 926, 931-32 (9th Cir. BAP 1997).

The Court's comments at the confirmation hearing were solely to the effect that the bare record in this case (as in a few others, out of some 60 heard on January 6) didn't alone support the reasonableness of the fee. Occasionally, chapter 13 cases are so straightforward that the Court needs counsel to explain what the Court's file fails to disclose – why a fee more often seen in the “typical” chapter 13 case is nevertheless appropriate. Counsel has not provided this needed explanation.³

Thus the record before the Court reflects only the following. The Debtor is single, with no dependents. He is employed as a mechanic. He has limited priority debt of \$450.00. He has no real estate debt. His plan does not separately classify any of the scheduled \$11,400.00 in general unsecured debt. He has two vehicles, but neither secures

³ The debtor's attorney in one of the other January 6 cases adequately justified the fees by post-hearing affidavit, which reflected his resolution of certain tax issues and, in particular, a creditor's stay violation. Neither required pleadings and the services thus were not apparent from the Court's file. In another, the attorney provided an itemization of time spent and anticipated, and justified the charges. Counsel in the case at bar has, in other chapter 13 cases, provided such fee affidavits. He is familiar both with the process and with what needs to be set forth.

any debt. He has no leases or codebtors. He does not appear to have any particularly problematic claims or unusual issues to address.

He has four claims secured by items of personal property, three being collateralized by tools, and one by a vacuum. All are small in amount. Two of these creditors are subject to cramdown in the plan, and one is paid “outside “ the plan. The fourth, a \$200.00 claim, is not specifically addressed in the plan.

The plan used here, which was filed with the petition, is the model plan in this District.⁴ It is easily generated and was modified here only slightly. If there is something about this case that supports a \$1,000.00 fee, it is not readily evident.

The Court believes, from other cases in which Counsel represents chapter 13 debtors, that a rate of \$125.00 per hour is generally used. Such a rate is not unreasonable. But it also reflects the skill and experience of Counsel. That skill and experience should result in some efficiencies in practice, and one would expect those efficiencies to be particularly applicable to uncomplicated chapter 13 cases such as this.

The Court assumes attorney time⁵ would be required, in a case such as this, to initially meet and confer with the debtor; review worksheets or draft schedules regarding assets and liabilities; cause the required pleadings (including the form plan and order of confirmation) to be generated, and review the same; attend the meeting of creditors and

⁴ *See, Gebert*, 99.4 I.B.C.R. at 137, n.1.

⁵ Certain services in a chapter 13 case do not require the attorney’s personal services (or, at least, his services charged at full rate) because they are clerical or administrative in nature.

address any concerns of the Trustee; and attend the confirmation hearing.⁶ While every case will be different, with greater time required on some aspects and less required on others, the Court would estimate from the file in this case that no more than 6 hours of attorney time would have been expended.⁷ This would generate a \$750.00 fee at the presumed rate. While it might be possible to identify or explain services which fill the gap between this amount and the desired \$1,000.00, Counsel hasn't done so.

The Court concludes that the burden of sustaining a \$1,000.00 fee has not been met. It appears that more was charged to the Debtor than was reasonable and appropriate in this case. The Court will reduce the fee, pursuant to the authority of § 329(b) and Rule 2017, by the amount of \$250.00, leaving a total fee in this matter of \$750.00. Of that amount, \$450.00 has already been paid, leaving \$300.00 to be funded under the plan. The plan will be confirmed, as amended by this decision.

ORDER

⁶ These last two matters reflect appearances before the Trustee or Court at which a debtors' counsel may have several clients' cases scheduled. It would be assumed that, in such situations, an adjusted charge is made to each client. Additionally, in many uncomplicated cases, confirmation is uncontested and the order submitted soon after the meeting of creditors under this District's accelerated or "automatic" confirmation procedure. In such cases, the required services, and charges, are even less.

⁷ In no sense does the Court find that all chapter 13 cases require this amount of time, nor does it set a minimum fee. As noted, each case is different, and all debtors' attorneys are bound to account for the reasonableness of their charges. The Court has merely attempted to estimate the sort of time commitment the cold file here suggests, and believes (absent anything from Counsel to the contrary) that it has done so on the high side.

Based upon the foregoing and the record in this case, the reasonable compensation of the Debtor's Counsel in this case is set at \$750.00, and the plan is amended, by virtue hereof, to provide for payment to Counsel of \$300.00. The Order submitted and endorsed by the Trustee shall be entered, as here modified. Dated this 28th day of January, 2000.